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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.         | CONFIRMATION NO. |
|---|-------------|----------------------|-----------------------------|------------------|
| 10/020,319  | 12/11/2001  | Del Ray Doty         | DJORTH.030A                 | 8358             |
| 20995   | 7590        | 03/30/2004           |                             |                  |
| KNOBBE MARTENS OLSON & BEAR LLP<br>2040 MAIN STREET<br>FOURTEENTH FLOOR<br>IRVINE, CA 92614 |             |                      | EXAMINER<br>DAHBOUR, FADI H |                  |
|   |             |                      | ART UNIT                    | PAPER NUMBER     |
|   |             |                      | 3743                        |                  |

DATE MAILED: 03/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                               |                             |  |
|------------------------------|-------------------------------|-----------------------------|--|
| <b>Office Action Summary</b> | Application No.<br>10/020,319 | Applicant(s)<br>DOTY ET AL. |  |
|                              | Examiner<br>Fadi H. Dahbour   | Art Unit<br>3743            |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 26-28 is/are allowed.
- 6) ☒ Claim(s) 1-4, 11, 18-23 and 25 is/are rejected.
- 7) ☒ Claim(s) 5-10, 12-17 and 24 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/19/02, 3/18/02, 4/2/02.</u> | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 11, 18-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Malewicz et al (US5437619).

Malewicz discloses an orthopedic brace (Figs.1-10), comprising a first support (18 of Fig.1), a second support (26 of Fig.1), and a hinge assembly rotatably connecting the first and second supports (16 of Fig.1), wherein at least one of the first and second supports comprises an outer portion defining a longitudinal channel (20, 28 of Fig.1) and a telescoping upright movable in the channel to adjust a length of the support (22, 30 of Fig.1), at least one flexible strap encircling a portion of the brace and a portion of a patient's leg to secure the brace to the leg (24, 32, 34 of Fig.1; also see "knees" in line 15 of col.1), at least one padded cuff disposed between the brace and the leg (132 of Fig.1), wherein the upright is removable from the at least one of the first and second supports to shorten an overall length of the brace (Fig.9, also see "can press button...to disengage extendable arm 22" in lines 11-12 of col.5), wherein the first and second supports are curved about an axis that is parallel to a longitudinal axis of the brace (Fig.9; also see 18, 26 of Fig.1), wherein the hinge assembly comprises flexion-limiting stops (16 of Figs.1-8), wherein the hinge assembly comprises extension-limiting stops (16 of Figs.1-8).

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3. Claim 20 is rejected under 35 U.S.C. 102(b) as being anticipated by Rolfes.

Rolfes discloses an orthopedic brace (Figs.1-12), comprising a first support (24 or 26 of Figs.1-2, 8), a second support (26 or 24 of Figs.1-2, 8), a hinge assembly rotatably connecting the first and second supports (22 of Figs.1-2, 8), wherein at least one of the first and second supports (24 of Figs.1-2, 8) comprises a first portion constructed of a thermoplastic composite and a second portion constructed of a metal (see "24 comprises a flexible belt 50...having...synthetic plastic" in lines 13-15 of col.5, also see "24 further comprises a plate 64 which can be...metal" in lines 41-42 of col.5).

#### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 20-23, 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rolfes in view of Deharde et al.

Rolfes discloses an orthopedic brace (Figs.1-12), comprising a first support (30, 64 of Figs.1-2, 8), a second support (32, 90 of Figs.1-2, 8), a hinge assembly rotatably connecting the first and second supports (28 of Figs.1-2, 8), wherein at least one of the first and second supports (30, 64 of Figs.1-2, 8) comprises a first portion constructed of a thermoplastic composite (64 of Figs.1-2, 8; also see "64 which can be of rigid plastic" in lines 41-42 of col.5) and a second portion (30 of Figs.1-2, 8), wherein the first portion

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comprises an outer portion defining a longitudinal channel (see "channel 66" in lines 42-43 of col.5, also see 66 of Figs.1-2, 8), wherein the second portion comprises a telescoping upright movable in the channel to adjust a length of the support (see "the upper extension 30 is moved telescopically within...72" in lines 51-52 of col.5, also see Figs.1-2, 8), wherein the first portion is connected to a hinge plate (28 of Figs.1-2, 8).

Rofles lacks the second portion being constructed of metal. Deharde discloses a portion being constructed of metal (see "aluminum" in line 47 of col.8, and in line 27 of col.12; also see Figs.1-4). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the feature taught by Deharde, in the device of Rofles, because Deharde teaches that it serves to provide the property of being lightweight (see "lightweight" & "light" in lines 47 & 49 of col.8 of Deharde). Furthermore, regarding claims 23 & 25, Rofles lacks the hinge plate being metal. Deharde discloses metal (see "aluminum" in line 47 of col.8, and in line 27 of col.12; also see Figs.1-4). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the feature taught by Deharde, in the device of Rofles, because Deharde teaches that it serves to provide the property of being lightweight (see "lightweight" & "light" in lines 47 & 49 of col.8 of Deharde), and also because Deharde teaches that it serves to provide the property of being "bendable.... to be bent to conform to the outer contour of the limb of a user" in lines 48, 50-51 of col.8 of Deharde).

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***Allowable Subject Matter***

6. Claims 5-10, 12-17, 24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Claims 26-28 are allowed.

***Conclusion***

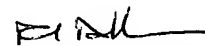
8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Cruz is cited to show an orthopedic brace.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fadi H. Dahbour whose telephone number is 703-306-5479. The examiner can normally be reached on M-F, 9am-5:30pm est.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett, can be reached on (703) 308-0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Fadi H. Dahbour  
Examiner  
Art Unit 3743